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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 0465-1081P	
	Application Number 10/720,077-Conf. #4939	Filed November 25, 2003	
	First Named Inventor Jong Seok KIM et al.		
	Art Unit 1746	Examiner J. M. Heckert	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached 5 (five) sheets. Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div><div><input type="checkbox"/> applicant /inventor.</div><div><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</div><div><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>39,538</u></div><div><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</div></div> <div><div> Signature</div><div><u>James T. Eller, Jr.</u> Typed or printed name</div><div><u>(703) 205-8000</u> Telephone number</div><div><u>August 24, 2007</u> Date</div></div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <div><input type="checkbox"/> *Total of <u>1</u> forms are submitted.</div>			



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**RESPONSE UNDER 37 CFR 1.116
EXPEDITED PROCEDURES EXAMINING
GROUP 1746**

PATENT
0465-1081P

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant:	Jong Seok KIM	Conf. No.:	4939
Appl. No.:	10/720,077	Group:	1746
Filed:	November 25, 2003	Examiner:	J. M. Heckert
For:	DRUM TYPE WASHING MACHINE		

REQUEST FOR A PRE-APPEAL BRIEF CONFERENCE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellants hereby request a pre-appeal conference with respect to the final Office Action dated May 24, 2007, in which pending claims 5-12 continue to be rejected. A Notice of Appeal is being filed herewith.

GROUND OF REJECTION TO BE REVIEWED

A. Claims 5-7 and 9-11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,158,257 to Ryan et al. ("Ryan").

B. Claims 8 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ryan in view of U.S. Patent 5,907,880 to Durazzani et al. ("Durazzani").

ARGUMENT

A. This rejection is improper and should be withdrawn for at least the following reasons.

The Office Action clearly admits that Ryan does not disclose the dampening device arrangement recited in claim 5, i.e., a damper comprising (1) first and second dampers provided at left and right sides under a bottom of the tub to attenuate the vertical and horizontal vibrations; and (2) a third damper provided in rear of the tub to attenuate the front-to-rear vibration.

The final Office Action attempts to remedy this deficiency, by citing In re Japikse, 86 USPQ 70 (CCPA 1950) for the proposition that rearrangement of parts was held to have been obvious. The Office Action states that “Ryan et al. already discloses multiple dampers, and it would have been obvious to arrange them in whatever fashion yields the most efficient dampening effect.” Applicants respectfully disagree, and assert that this case is also improperly applied to the facts at hand. Japikse claimed a hydraulic power press. Claim 3 of Japikse allegedly read on the “Cannon” reference except for the feature, “means disposed in alignment with said opening for contact by said depending means to start the pressing operation of said hydraulic press.” The Board held that there would be no invention in shifting the starting switch disclosed by Cannon to a different position since the operation of the device would not thereby be modified (emphasis added). The Court found no error in that holding of the Board.

Unfortunately, the Office Action fails to explain how the proposed fundamental redesign of Ryan which deals with the operational aspects of Ryan’s device, relates to locating a power

switch for a hydraulic press that had no effect on the operation of the hydraulic device in issue in “Japikse.”

Moreover, the Office Action attempts to redesign the fundamental structure of Ryan in a counter-intuitive manner, i.e., by replacing two fixed, non-hinged, dampers, one located in front of the tub, the other being located behind the tub, connected to the top of the cabinet, with the claimed three element damper structure, two of which are provided at right and left sides under a bottom of the tub, and a third located in the rear of the tub.

The Office Action also improperly tries to shift its burden of making a *prima facie* case of obviousness by arguing that “Applicant merely argues that the case law is improperly applied, yet gives no reason as to why this dampener arrangement would be a patentably distinct arrangement.” This position is completely improper. During patent examination the PTO bears the initial burden of presenting a *prima facie* case of unpatentability.

The Office Action asserts that “Japikse” is still relevant because the “applicant is still claiming a dampener, a known device with a known function, in a different arrangement to achieve the same dampening function.” Applicant respectfully submits that this is like arguing that motor vehicle disc brakes are obvious in view of motor vehicle drum brakes because they are both known devices that perform the same function, and submits that both assertions are without merit.

The Office Action’s attempt rely on Applicant’s own disclosure that the dampener 90 is ‘versatile’ (paragraph 47), thereby implying that this particular arrangement is not essential to the Applicant’s invention and can be further interpreted as a concession that rearrangement is, in

fact, obvious, is completely improper, as Applicant's disclosure cannot properly be used against Applicant. See, for example, In re Ruff and Dukeshire, 118 USPQ 340 (CCPA 1958).

The Office Action refers to U.S. patent 6,622,530 to Summer et al., to U.S. Patent 6,574,997 to Mayer et al., and to U.S. Patent 5,207,081 to Fuse to "affirm, along with the above argument, that the rejection under "Japikse" is proper. Applicants respectfully disagree with this conclusion and point out that none of these three references are relied upon in the rejection of claims 5-7 and 9-11 under 35 USC § 103. Nor does the Office Action explain what these three references have to do with the applicability of the "Japikse" case to the claimed invention.

B. The Office Action does not make out a *prima facie* case of obviousness of claims 8 and 12 based on Ryan for reasons stated above, and Durazzani is not applied to remedy the aforementioned deficiencies of Ryan. The Office Action also fails to provide objective factual evidence that one of ordinary skill in the art would turn to Durazzani to modify Ryan, as suggested. Ryan clearly discloses that its non-hinged suspension subassemblies 18 and 20 are "softer" (more compliant) than conventional tub suspension subassemblies. This is reason enough not to turn to Durazzani to modify the more compliant subassemblies of Ryan which, as clearly shown in Fig. 1 of Ryan, do not include hinges, or show a rigid coupling scheme, or connect pistons 48 to the drum. In fact, this improved, softer, more compliant structure taught by Ryan is reason for one of ordinary skill in the art not to turn to Durazzani to modify Ryan to arrive at the claimed invention.

The Office Action states that a hinge is a well-known means of pivotably attaching one object to one another and Durazzani shows the use of hinges with washing machine dampening

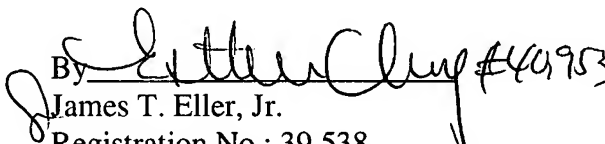
structures and, thus, the rejection is proper. Applicants respectfully submit that this argument is not persuasive because of Ryan's explicit disclosure in col. 4, lines 5-13 that computer simulations have shown that the tub assemblies 18 and 20 (which are not disclosed as being hinged) are more compliant than conventional tub subassemblies for horizontal axis clothes washing machines, and because Durazzani's hinged dampening structures can be considered to be included in what Ryan describes as conventional tub subassemblies that are less compliant than Ryan's disclosed, non-hinged tub subassemblies. In other words, Ryan actually teaches away from using hinged dampening structures with horizontal axis washing machines.

Accordingly, the outstanding rejections should be withdrawn and the Application passed to issue.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: August 24, 2007

Respectfully submitted,

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